IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1165 OF 2002

Santosh Mahadeo Erande
Age 21 years, Occ: Labour
Residing at Bharatnagar Zopadpatti
Near Railway Station, Pimpri
Pune. ...Appellant (Orig.Accd.)

Vs.

The State of Maharashtra ...Respondent
(Orig.Complainants)

Mr. Nitin Jamdar with Mr. Vijay Killedar for the Appellant
Mr.A.S.Gadkari, A.P.P for the State.

CORAM: SHRI D.G.DESHPANDE &
SMT. ROSHAN DALVI, JJ.
DATED: 22ND NOVEMBER, 2006

JUDGMENT (PER SMT. ROSHAN DALVI, J.)

1. The original accused is the husband of his deceased wife who was alleged to have been burnt by him on 5th August, 2000 by pouring kerosene on her body and setting her aflame. He has been charged under Section 302 of the Indian Penal Code, for which he has been convicted. He has also been charged under Section 498(A), 323 and 504 of the Indian Penal Code for which he has been acquitted and the State has not preferred any appeal thereon.

2. We have therefore to consider whether the charge under Section 302 of the Indian Penal Code upon the aforesaid prosecution case is sustainable and whether the conviction thereon can be maintained.

3. The accused and the deceased were married in 1999. The deceased expired on 11th August, 2000 after having sustained burn injuries on 5th August, 2000. The factum of the burn injuries is not denied. It has to be seen whether the accused alone has caused the said injuries. She is shown to have 93% burn injuries as per P.M. Report exhibit-21.

4. The Prosecution examined nine witnesses to prove the offence under Section 302 of the Indian Penal Code. The conviction is based on the Dying Declaration of the deceased corroborated by the Medical Report and the evidence of neighbours and relatives. The case of the Appellant is one of denial.

5. The Appellant has essentially challenged the acceptance of the Dying Declaration (DD) made by the deceased on various grounds :

a) That the SEM did not display his identity card.

b) That the exact time of the DD was not recorded.

c) That the SEM did not personally obtain the thumb impression and record that fact.

d) That the thumb impression was not made in the presence of the Doctor who endorsed her medical condition.

e) That the person making the DD is not examfined

f) The time of the incident was not recorded

g) The impression is clear with ridges and curves

h) The DD is on a printed form

i) The DD is not recorded in the presence of the Doctor who endorsed her medical condition

The acceptability or otherwise of the DD shall have to be considered based upon these factors.

6. The deceased victim has herself made oral dying declaration to her aunt (p.w.4) and the dying declaration to the SEM (p.w.3). The evidence of both these witnesses shows that she stated to them that there were quarrels between her and her husband. The incident has been clearly, briefly and precisely stated by her to both these witnesses. It is that her husband was away from the house for 4 days. They had a quarrel as usual on 5th August, 2000. Her husband poured kerosene on her body and set her aflame. There is nothing to disbelieve her statement in the

dying declaration. Both the declarations are consistent. The evidence of her aunt (p.w.4) shows the earlier conduct of the accused also. Her deposition is that there used to be quarrels every day between the accused and the deceased and that the accused was addicted to liquor and the deceased used to make grievances to her often. She had told her aunt of the beatings suffered by her earlier. Her cross examination shows that she had advised the deceased to lodge a complaint against her husband for the grievances suffered by her but which she had not done. Her evidence also shows the cause of the last quarrel leading to her death. That was because of the demand for money to be spent for liquor consumption.

7. The neighbour (p.w.2) has deposed about the quarrels between the deceased and the accused. His deposition shows how the accused was gambling on the date of the death of his wife outside his hut, wherein they had quarrel which continued after the accused went inside the hut when the witness went inside his own hut. His deposition also shows the grumblings heard by him from the house of the accused. Though this witness has not deposed about the actual incident, the evidence about the atmosphere in the house is shown to be gername to the commission of the crime a little later. P.W.7 has also deposed about the

quarrel. His deposition is from a different angle. He has deposed about the fact of quarrel near the house of the mother of the Accused which continued in their own house after the accused and victim reached home. Contrary to the contention of the Advocate for the Appellant, the depositions of P.W.2 and 7 are consistent. They show the quarrel where the Appellant was gambling, and later when he was near the house of his mother on the way to his house and continued even after reaching his own home. Consequently, the contention of the Appellant that there was no motive is incorrect. The quarrel led to the incident.

8. The dying declaration has been correctly recorded by the SEM (p.w.3) and endorsed by the Medical Officer (p.w.9). The evidence of P.W.4 and 9 are consistent in respect of the condition of the deceased which is reflected in the dying declaration.

The contentions on behalf of the Appellant for rejecting the Dying Declaration recorded by the SEM, which is consistent with the earlier oral Dying Declaration made to the aunt of the deceased are flimsy. The SEM is not required to display any identity card. He is known to the Doctor P.W.9. He has approached the Doctor and the Doctor has examined the deceased with regard to her mental condition as required.

Recording of the exact time of the Dying Declaration or the time of the incident is not a mandatory requirement. The fact that the printed form is made available itself shows that the use of such printed form ipso facto does not invalidate and otherwise validly recorded Dying Declaration. Even the presence of the Doctor at the time of recording is not required. In fact it is most impracticable. The only mandatory requirement is the examination of the medical condition of the patient. Once that is certified as sound by a qualified Doctor, and in this case he is the Surgeon, the rest of the recording is a matter between the SEM and the declarant. All that is to be seen is whether the declarant was tutored or has otherwise given a false declaration as can be seen from the related evidence or whether the declaration is reliable as a truthful declaration made by none other than the declarant. It is settled law that if that is so, conviction can be based on that sole basis even without any further corroboration. The Dying Declaration has been made in the presence of the SEM who recorded it. The thumb impressions is stated to be clear on the oral Dying Declaration. We do not see how such clear thumb impression can go against the case of the prosecution. The contention of the accused that no such thumb impression can be clear in case of the burn injuries of the extent that the deceased suffered is unacceptable. Much depends upon which parts of the body came to be burnt. We have absolutely no

hesitation in accepting the Dying Declaration as correct and as correctly recorded.

9. The Doctor (p.w.5) has given the cause of death in the P.M. Report which he prepared. This shows 93% burn injuries on the head, neck, face, upper limb, lower limb, thorax, abdomen, back and genitals. The P.M. Report also shows that the deceased was pregnant and died because of shock due to burns.

10. The evidence of P.w 1 and 8 show the spot of the offence which was the room in which they both resided. The spot panchanama proved by P.W.1 shows a kerosene can match box and half burnt clothes. The cross examination of this witness shows one burnt match stick also seized under the panchanama.

11. The cross examination of these witnesses has not at all disturbed the prosecution case.

12. The case that the accused caused the death of his wife by pouring kerosene on her body, the entire of which suffered from burn injuries, is made out.

13. Consequently the judgment of the learned II Additional

Sessions Judge, Pune cannot be faulted. The conviction under Section 302 of the Indian Penal Code passed against the accused is confirmed and upheld.

Appeal is dismissed.

(SMT.ROSHAN DALVI, J.) **(SHRI. D.G.DESHPANDE, J.)**